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09/423,131	11/05/1999	HIROSHI KAWAKAMI	3815/90	6371

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EXAMINER

HOM, SHICK C

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/423,131

Applicant(s)

KAWAKAMI ET AL.

Examiner

Shick C Hom

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION:

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-23 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-5 and 8-23 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>21</u> . | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed 6/8/04 have been fully considered but they are not persuasive.

In page 15 line 13 to page 16 line 13, applicant argued that Onyiagha does not disclose data transmission takes place in a burst mode at a period proper to the data is not persuasive because Onyiagha in col. 2 lines 49-54 recite that the data transmission being used characterized as bursty traffic reads on data transmission taking place in a burst mode at a period proper to the data, i.e. communications traffic characterized by periods of high intensity separated by intervals of little or no utilization. In page 16 line 14 to page 17 line 2, applicant argued that Onyiagha dose not disclose the transmission path between the radio base station and the local switch for transmitting data between the radio base station and the local switch is not persuasive because Onyiagha in col. 2 lines 49-54 recite the base station being connected to the mobile radio telephone network reads on the local switch because a local switch is merely a switch to which the telephony system is directly connected, i.e. in this case the mobile radio telephone network corresponds to the local switch. In page 17 lines 3-14,

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applicant argued that Onyiagha dose not disclose a LAN comprising a traffic control unit as in claim 11 and the shared resource being a LAN as in claim 17 is not persuasive because col. 3 lines 16-23 which recite the use of a LAN and col. 1 lines 26-32 which recite providing means for access control to the network clearly anticipate the LAN comprising a traffic control unit as in claim 11 and the shared resource being the LAN as in claim 17. In page 17 line 15 to page 18 line 23, applicant argued that while Klausmeier et al. disclose a PBX, i.e. customer premise equipment, and a packet router, Klausmeier et al. does not disclose the means for traffic control being in the PBX unit and being in a gateway switch is not persuasive because it would have been obvious to provide the means for traffic control in the PBX and in a gateway switch in order to provide means for housing the traffic control mechanism of Onyiagha; further, the term gateway switch is usually used for a type of router which not only routes traffic but which also has the ability to translate data between different types of protocols, the gateway switch recited in the preamble does not appear to translate data between different types of protocols and therefore not accorded the patentable weight since it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on

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the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 3-5, 8-12, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Onyiagha (6,377,545).

Regarding claims 3, 9, 11, and 17:

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Onyiagha disclose the radio base station (see the base station in the mobile radio telephone network in col. 2 lines 49-54) comprising a traffic control unit, the traffic control unit comprising: receiving means for receiving data; traffic control means for carrying out traffic control of the data received by said receiving means; and transmission means for transmitting the data passing through the traffic control by said traffic control means, wherein said traffic control means carries out traffic control of data to be transmitted to a local switch through a transmission path between the radio base station and the local switch for transmitting data between the radio base station and the local switch, from among the data received by said receiving means, and said traffic control means carries out the traffic control by discarding data unconformable to the traffic condition, or regulating transmission of the data unconformable to the traffic condition to meet the traffic condition (see means for traffic control which includes discarding cells that are non-conforming in col. 2 lines 3-48 and col. 3 lines 34-55; see the LAN in col. 3 lines 16-23), wherein said data takes place in a burst mode at a period proper to the data, and wherein said traffic control means carries out, for the data received by said receiving means, the traffic control such that a cumulative transmission volume in a traffic

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monitoring period defined by taking account of the proper period does not exceed a volume based on a traffic rate (see means for traffic control which includes discarding cells that are non-conforming in col. 2 lines 3-48, col. 3 lines 34-55, and traffic control means further takes into consideration expected arrival rate of cells in col. 3 lines 34-55).

Regarding claims 4 and 10:

Onyiagha discloses the traffic control unit for carrying out traffic control of data taking place in a burst mode at a period proper to the data, said traffic control unit comprising: receiving means for receiving the data; traffic control means for carrying out the traffic control for the data received by said receiving means such that a cumulative transmission volume in a traffic monitoring period defined by taking account of said proper period does not exceed an allowed transmission volume based on a traffic rate; and transmission means for transmitting the data controlled by said traffic control means (see means for traffic control which includes discarding cells that are non-conforming in col. 2 lines 3-48, col. 3 lines 34-55, and traffic control means further takes into consideration expected arrival rate of cells in col. 3 lines 34-55).

Regarding claim 5:

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Onyiagha discloses wherein said traffic control means carries out, for the data received by said receiving means, peak traffic control such that a cumulative transmission volume in a peak traffic monitoring period defined by taking the account of the proper period does not exceed an allowed transmission volume based on a peak traffic rate, and sustainable traffic control such that a cumulative transmission volume in a sustainable traffic monitoring period defined by taking the account of the proper period does not exceed an allowed transmission volume based on a sustainable traffic rate (see the use of peak and mean bit rates for traffic control in col. 2 lines 3-48).

Regarding claim 8:

Onyiagha discloses wherein said data consists of ATM cells generated from a radio frame (see col. 5 lines 52-67 and col. 6 lines 35-40), and said proper period equals a radio frame period (col. 6 lines 18-27).

Regarding claim 12:

Onyiagha discloses wherein said traffic control means carries out traffic control of data to be transmitted to a local switch through a transmission path between the LAN and the local switch for transmitting data between the LAN and the local switch, from among the data received by said receiving means



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(see traffic control of data in col. 2 lines 3-48 and output to  
the network and switch in col. 3 lines 34-55).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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7. Claims 13-16, 18-19, and 20-23 are rejected under 35 U.S.C.

103(a) as being unpatentable over Onyiagha (6,377,545) in view of Klausmeier et al. (5,570,360).

Regarding claims 13, 15, 18, 19:

Onyiagha discloses the traffic control unit, the traffic control unit comprising: receiving means for receiving data; traffic control means for carrying out traffic control of the data received by said receiving means; and transmission means for transmitting the data passing through the traffic control by said traffic control means, wherein said traffic control means carries out traffic control by discarding data unconformable to the traffic condition, or regulating transmission of the data unconformable to the traffic condition to meet the traffic condition (see means for traffic control which includes discarding cells that are non-conforming in col. 2 lines 3-48 and col. 3 lines 34-55).

For claims 13, 15, 18, and 19, Onyiagha discloses all the subject matter of the claimed invention with the exception of the PBX as in claims 13 and 18 and the gateway as in claims 15 and 19.

Klausmeier et al. from the same or similar fields of endeavor teach that it is known to provide the PBX and gateway (see col. 3 lines 45-50, where the packer router corresponds to

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the gateway), respectively. Thus, it would have been obvious to

~~the person having ordinary skill in the art at the time the~~  
invention was made to provide PBX and gateway including the  
traffic control unit as taught by Klausmeier et al. to provide  
communication equipment in which the traffic control unit  
Onyiagha can reside and function as designed.

Regarding claim 14:

Onyiagha discloses wherein said traffic control means  
carries out traffic control of data to be transmitted to a local  
~~switch through a transmission path between the PBX and the local~~  
switch for transmitting data between the PBX and the local  
switch, from among the data received by said receiving means  
(see traffic control of data in col. 2 lines 3-48 and output to  
the network and switch in col. 3 lines 34-55).

Regarding claim 16:

Onyiagha discloses wherein said traffic control means  
carries out traffic control of data to be transmitted to a local  
switch through a transmission path between the gateway switch  
and the local switch for transmitting data between the gateway  
switch and the local switch, from among the data received by  
said receiving means (see traffic control of data in col. 2  
lines 3-48 and output to the network and switch in col. 3 lines  
34-55).

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Regarding claims 20-23:

Onyiaha discloses wherein said traffic condition is a condition that an amount of data transmitted by a user does not exceed a predetermined amount (see col. 4 lines 26-37 which recite user exceeding the maximum incoming data cell rate allowed by the arrival contract being nonconforming cells and are discarded).

**Allowable Subject Matter**

8. Claims 6 and 7 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

**Conclusion**

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

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is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick C Hom whose telephone number is 703-305-4742. The examiner can normally be reached on Monday to Friday with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 703-308-5463. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SH



DANGTON  
PRIMARY EXAMINER